

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FLOYD ANTHONY RODGERS,

Plaintiff, No. CIV S-05-0295 FCD GGH P

vs.

J. HAMILTON,

Defendant. ORDER

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$250.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected

1 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in  
2 plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3           The court is required to screen complaints brought by prisoners seeking relief  
4 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
5 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
6 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
7 granted, or that seek monetary relief from a defendant who is immune from such relief. 28  
8 U.S.C. § 1915A(b)(1),(2).

9           A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
11 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989); Franklin, 745 F.2d at 1227.

16           A complaint, or portion thereof, should only be dismissed for failure to state a  
17 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set  
18 of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King &  
19 Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also  
20 Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing  
21 a complaint under this standard, the court must accept as true the allegations of the complaint in  
22 question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the  
23 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor.  
24 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

25           The only named defendant is J. Hamilton. Plaintiff alleges that defendant  
26 Hamilton issued a counseling chrono to plaintiff that falsely accused him of making disrespectful

1 statements to her. Plaintiff also alleges that defendant Hamilton filed a rules violation report  
2 falsely charging plaintiff with disrespect of staff.

3 Plaintiff alleges that defendant Hamilton slandered him in violation of his  
4 constitutional rights. There is no civil rights action for slander. Hollister v. Tuttle, 210 F.3d  
5 1033, 1035 (9<sup>th</sup> Cir. 2000). Accordingly, this claim is dismissed.

6 Plaintiff may also be claiming that by issuing the counseling chrono and rules  
7 violation report, defendant Hamilton violated his right to due process. In order to state a due  
8 process claim, defendant Hamilton's actions must have resulted in the imposition of restraints  
9 that resulted in an "atypical and significant hardship on the inmate in relation to the ordinary  
10 incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484, 115 S.Ct. 2293 (1995). Plaintiff  
11 does not allege that he suffered any injury as a result of defendant Hamilton's actions. Because  
12 plaintiff has not plead that he suffered a restraint that resulted in an atypical and significant  
13 hardship in relation to the ordinary incidents of prison life, this claim is dismissed.

14 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
15 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
16 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms  
17 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
18 there is some affirmative link or connection between a defendant's actions and the claimed  
19 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
20 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
21 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board  
22 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

23 In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
24 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an  
25 amended complaint be complete in itself without reference to any prior pleading. This is  
26 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.

Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis is granted.
  2. Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.

The fee shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections filed concurrently herewith.

3. The complaint is dismissed for the reasons discussed above, with leave to file an amended complaint within thirty days from the date of service of this order. Failure to file an amended complaint will result in a recommendation that the action be dismissed.

DATED: 8/10/05

/s/ Gregory G. Hollows

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**GREGORY G. HOLLOWSS  
UNITED STATES MAGISTRATE JUDGE**

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